



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

June 22, 1960

The Hon. Zollie Steakley
Secretary of State
Capitol Station
Austin 11, Texas

Opinion No. WW-860

Re: Whether the Secretary of State should accept and file Articles of Incorporation with purposes directly connected with and related to the operation of a detective agency without requiring compliance with Sub-division (96) of Article 1302.

Dear Sir:

This office has considered your opinion request which reads in part as follows:

"This is to request your opinion concerning proposed Articles of Incorporation which include the following purpose clauses:

- (a) To engage in a sales checking service for merchants, proprietors, and all other firms, persons, or corporations engaged in the sale or distribution of goods, wares and merchandise at retail or wholesale; for the purpose of determining and establishing cash or inventory shortages or both such sources, and the cause and the amount of any such shortages and the loss, if any, resulting therefrom.
- (b) Provide service to merchants, proprietors and all others engaged in the wholesale or retail sale or distribution of goods, wares and merchandise, to inspect, investigate and determine cash or inventory shortages by said owners of businesses and report findings to clientele;
- (c) To generally conduct an investigation service to persons engaged in the retail or wholesale business as it relates to problems of their personnel where these persons are suspected of being responsible for cash or inventory shortages and detecting the cause or causes of said shortages.

"Article 9.15B of the Business Corporation Act provides in part as follows: "...any special limitations, obligations, liabilities, and powers, applicable to a particular kind of corporation for which provision is made by the laws of this State. . .shall continue to be applicable to any such corporation. . .".

"It has been the departmental construction of this office since the effective date of the Business Corporation Act (and prior to this administration) that corporations organized for the purpose of operating a general detective agency are "a particular kind of corporation" within the purview of Article 9.15B, and hence must comply with Subdivision (96) of Article 1302 of the Revised Statutes."

It is our understanding that it is the position of the attorneys representing the proposed corporation that the corporation is not a general detective agency within Art. 1302(96).

There are two questions involved in this opinion request:

(1) Is the proposed corporation a general detective agency within Art. 1302(96). The answer is "yes".

(2) Has Art. 1302(96) been repealed by the Texas Business Corporation Act? The answer is "no".

Article 1302(96) authorizes the incorporation of general detective agencies and provides in part:

"96. Private corporations may be created under the General Laws of this State by the voluntary association of three (3) or more persons for the purpose of authorizing, creating, and operating a general detective agency to furnish detectives to make investigations and reports of same to the proper persons, to guard, watch and protect property of industrial plants, business institutions and residential properties in this State; providing, however, no such corporation shall be created with less than Ten Thousand Dollars (\$10,000.00) capital stock, and providing further that no such corporation shall be incorporated as herein provided, nor shall any permit be issued to any foreign corporation until such corporation shall have executed a good and sufficient surety bond or insurance policy (in the event of a bond to be signed by some good solvent

bonding company authorized to do business in this State, and in the event of an insurance policy to be executed by some good solvent insurance company authorized to do business in this State) and deliver the same to the Secretary of State. Said surety bond or insurance policy shall be in the sum of Ten Thousand Dollars (\$10,000.00) and shall be conditioned that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may be recovered against said detective agency by reason of the wrongful or illegal acts of its servants, officers, agents, or employees committed by them in the course of their employment. . ."

Basically, the purpose of the proposed corporation is to determine the cause and amount of cash or inventory shortages, and investigate personnel suspected of being responsible for these shortages. Subsection (96) provides for the organization of detective agencies "to make investigations and reports of the same to proper persons, to guard, watch and protect properties of. . . business institutions . . .". The function of the proposed corporation is largely investigative with the view of protecting the properties (both cash and inventory) of various types of businesses. These proposed activities are within the scope of Subsection (96). It is the conclusion of this office that if 1302(96) has not been repealed, then the proposed corporation must comply with that article.

The office of the Secretary of State has construed Article 9.15B as requiring compliance with 1302 Subsection (96) by proposed detective corporations.

Art. 9.15B of the Texas Business Corporation Act provides in part:

" . . . Any special limitations, obligations, liabilities, and powers, applicable to a particular kind of corporation for which special provision is made by the laws of this State, including, (but not excluding other corporations) those corporations subject to supervision under Article 1524a of the Revised Civil Statutes of Texas, shall continue to be applicable to any such corporation, and this Act is not intended to repeal and does not repeal the statutory provisions providing for these special limitations, obligations, liabilities, and powers." (Emphasis added)

Article 9.16A of the Texas Business Corporation Act provides:

“Subject to the provisions of the two last preceding Articles of this Act and of Section C of Article 2.02 of this Act and Section B of this Article, and excluding any existing general act not inconsistent with any provision of this Act, no law of this State pertaining to private corporations, domestic or foreign, shall hereafter apply to corporations organized under this Act, or which obtain authority to transact business in this State under this Act, or to existing corporations which adopt this Act.”

Article 9.15B, then, continues the applicability of any special limitations, obligations, liabilities, and powers, applicable to a particular kind of corporation for which special provision is made by the laws of this State. However, 9.16A provides that subject to Art. 9.15, and others, no other law pertaining to private corporations shall apply to corporations organized under the Business Corporation Act. The question becomes, then, whether or not the existing law under the terms of 9.15B remains applicable to the proposed corporation, or whether Article 9.16A has repealed the existing law. [1302(96)]

It is the opinion of this office that 9.15B is applicable. Article 9.16A explicitly provides that it is subject to the operation of Art. 9.15B. Article 9.15B continues the applicability of any special limitations, obligations, liabilities, and powers applicable to a particular kind of corporation. The existing law [1302(96)] places certain obligations and limitations on detective corporations. Each of such corporations must have \$10,000.00 capital stock before it can be chartered, and also it must place with the Secretary of State a \$10,000.00 surety bond conditioned upon the acts of the employees of the corporation. This bond provision was designed to protect the public against wrongful or illegal acts of employees of this type of corporation, the nature of which is susceptible to abuse.

In writing this opinion this office is not unmindful of comments of the Bar Committee, V.T.C.S., pp. 428 wherein it is stated that in the opinion of the Bar Committee 1302(96) was repealed by the passage of the new Corporation Act. In the event that the meaning of a statute is uncertain or ambiguous, and in the absence of a judicial determination, executive or departmental construction of that statute is persuasive. See 39 Tex.Jur. Sec. 126, pp. 235. The Office of the Secretary of State, since the passage of the Texas Business Corporation Act, has construed that 1302(96) was not repealed by that Act.

The Hon. Zollie Steakley, page 5 (WW-860)

SUMMARY

The proposed corporation is a general detective agency within Art. 1302(96), and Art. 1302(96) has not been repealed by the Texas Business Corporation Act.

Very truly yours,

WILL WILSON
Attorney General of Texas

By Bob E. Shannon
Bob E. Shannon
Assistant Attorney General

BES:lmc

APPROVED:

OPINION COMMITTEE:

W. V. Geppert, Chairman
R. V. Loftin, Jr.
W. Ray Scruggs
Bob Rowland

REVIEWED FOR THE ATTORNEY GENERAL
BY:

Leonard Passmore